

Court; or to make any objections, such as the Statute of Limitations, or the like, which can only come with propriety from a party interested, and which, therefore, if made by the auditor alone, will be disregarded.

But, notwithstanding a claim may have been formally vouched and reported as clear of all apparent objections, yet any party interested, a defendant or co-creditor, may deny its existence and oppose its allowance altogether, in which case it must be regularly and legally established, as upon an issue joined in a Court of law.

It has been found in practice, that there are several important advantages in sending the case at once to the auditor, and having an account stated. The claimants are immediately apprised of what is wanted, if any thing, to sustain their claims: those against which there is no objection may obtain satisfaction, or at least a dividend without further delay. The heirs and each creditor are informed of the nature of the distribution proposed to be made. Each claim is presented in a clear and distinct point of view. The debatable ground is designated, its extent reduced, and the progress of the cause accelerated.

The objections, that these claims No. 3, 4, and 5, are each of them founded on such a judgment against the executor as carries in itself conclusive evidence of a sufficiency of personal assets to * satisfy them, goes to their merits, and unless clearly obvi-
ated, they must be rejected. These claimants do not allege, **472**
that it will be in their power to remove this objection, by any means whatever, but rest their case entirely upon the fact of its having no foundation in equity. It is certain, that an absolute judgment, obtained without mistake or fraud, is conclusive evidence of a sufficiency of assets in the hands of the executor to satisfy such judgment. *Wheatley v. Lane*, 1 *Saund.* 219, n. 8; *Skelton v. Hawling*, 1 *Wils.* 258; *Suffolk v. Harding*, 3 *Rep. Chan.* 88; *Ramsden v. Jackson*, 1 *Atk.* 292; *Greerside v. Benson*, 3 *Atk.* 248; *Robinson v. Bell*, 2 *Vern.* 146; *Ruggles v. Sherman*, 14 *John.* 446; *Giles v. Perryman*, 1 *H. & G.* 168; *Gaither v. Welch*, 3 *G. & J.* 259. The admission of the defendants in this case of the insufficiency of the personal estate was made with reference to none other than the claim of the originally suing creditor by whom it was called for. Now it may be perfectly true, that the executor has actually reserved assets to pay claims No. 3, 4, and 5; and, yet no less true, that he has nothing left to meet the claim of this plaintiff.

There is then nothing in this objection of the auditor incompatible with the previous proceedings or acts of the Court; or which, as has been urged, militates against the decree which was grounded upon an alleged and admitted insufficiency of personal estate to satisfy the claim of the plaintiff; for these claims No. 3, 4, and 5, were not then before the Court.